

REMARKS

This is in response to the Official Action mailed March 2, 2009. Independent claim 23 has been amended, as has several of the dependent claims, and it is respectfully requested that the amendment be entered and that the case be passed to issue.

All of the claims in the case including independent claim 23 and those which depend from claim 23 were rejected as being anticipated by the Meyer et al. patent no. 4,004,883.

In this amendment, claim 17 has been cancelled, and claims 6-8, 15, 16, 18-27, 33 and 34 remain in the application.

Only one independent claim is presented, namely claim 23. In rejecting the claims, the Examiner indicated that the Meyer patent discloses a support (for test tubes) that have open receptacles, and retainer members which cooperate to embrace the sides of the tubes to permit limited orbital movement of the tubes with respect to the openings. The Examiner stated that the tubes fit through openings and had flanges that engage a portion of the tray around the openings to prevent the entire cup from passing through the openings.

It was further said that a cover member 34 was formed as a manifold over the tray, and could be used for passing liquids or gas into the test tubes.

It is respectfully requested that the teachings of the Meyer patent '883 be reviewed in detail, in relation to the amended claims because it is respectfully submitted that it clearly does not anticipate these claims.

First, claim 23 has been amended to more properly define the usage of the impactor devices that are present, and the cups that are portions of the cup shaped impactor devices. The impactor devices are specifically recited as being devices in which inhalable drug particles from an aerosol drug delivery device have been deposited for analysis.

Further, constructionally, the impactor devices each have a body that comprises a cup that fits through the openings of the tray and an integral cup flange that engages the surface portions of the tray around the openings to hold the cup in position.

The Meyer '883 patent fails to teach the use of an integral flange on the tubes shown, and depends upon friction devices comprising retainers 13 for holding the test tubes in place. Reference is

made in the continuation-in-part Meyer patent '883 to co-pending, parent application Serial No. 483,024, for a description of the elongated tray member 11, and that application Serial No. 483,024 issued as U.S. Patent No. 4,057,148, and was also cited by the Examiner. It can be seen in the '148 patent that the retainer devices 13 are grippers that hold a test tube, but which do not comprise cups, nor do the test tubes comprise cups that are used in impactor devices and hold particles for analysis. The test tubes do not have integral cup flanges, and thus cannot be used in an impactor that classifies drug inhalable particles that are deposited in the individual cups forming the cup impactor devices.

Again, the Meyer patents including 4,004,883, and the detailed showing of the mountings for the test tubes in 4,057,148, clearly show that the tray 11 is not useful as an impactor device and that there are no cups that integral flanges that are supported in the tray, so that the plurality of the cup shaped impactor devices can be lifted as a unit after the impaction process.

Claim 24 depends from claim 23 and specifies the tray as being a flat plate with the flanges of the cup being supported on the flat plate.

In regard to claim 25, the claim adds a cover member to form a manifold secured to and positioned over said tray and cups, with the cover member having a passageway that extends across all the cups and having openings from the passageway to an open top of each of the cups, with the open top of each cup being surrounded by the respective cup flange.

The Examiner indicated that in the Meyer '883 patent there was a cover member 34 forming a manifold over the tray, but it is respectfully submitted that description of item 34 in the Meyer '883 patent by the Examiner does not correspond to the description that is actually in the patent. Item 34 forms a "stripper assembly" and includes an arm 33 that is used to restrain the tubes, but is not in any way considered a manifold that provides a passageway with openings for carrying a gas into each of the underlying cups or even each of the underlying test tubes shown in the Meyer patent. The assembly 34, as described at column 4, lines 64-68 of patent '883 is to press the open ends of the tubes until they are disposed in a common horizontal plane.

The mechanism for imparting a vertical movement of the arm 34 to accomplish this result, starts at column 5, line 1, and in column 5, lines 24-28. It describes that the arm moves downwardly to push the tubes to a desired level. The arm holds the tubes in position during an interval of sensing

and/or leveling. Thus, the member 34 is nothing more than a device for moving or clamping parts in position and forms no function and contains no teaching of being a manifold having a passageway for introducing materials into underlying cups held in a tray. Thus, it is respectfully submitted that claim 25 defines a new combination over this reference and is allowable.

Claim 26 depends from claim 25 and is allowable therewith, and includes a second passageway, and the cover member will provide a second fluid, in this case a gaseous fluid to the cups.

Claim 27 further is allowable for the reasons set forth in connection with claim 25 because it defines a cover manifold that has a plenum chamber open to each of the cups, and specifically for introducing a coating material. Also it is connected to a source of gaseous fluid for eliminating vapors from the coating material. The slotted arm 33 forming part of the mechanism 34 in the Meyer '883 patent cannot fulfill, teach, or suggest the features of claim 22 in any way.

Claim 6 depends from claim 23, and defines the impaction surfaces, along with a manifold overlying the impaction surfaces and having openings for injecting liquid into each of the cups, and further includes a drain. Claim 6 is allowable for the reasons set forth in connection with claim 25, and again there is no suggestion or teaching in the Meyer '883 patent of any type of a manifold that accomplishes this action. The device moves and holds the individual test tubes into position on the tube rack.

Seals used for ensuring that the material that is injected or drained in the device of claim 6 are specified in claim 7, and it is believed that claim 7 is allowable with claim 6. Likewise, claim 8 defines a single passageway for gas and liquid leading to each of the impaction surfaces and is allowable with claim 6.

Claim 15 is allowable with claim 23, and further defines that the particles that have been classified and are carried in the cup and tray itself are held on a support that supports the tray and has a plurality of receptacles for receiving the cups carried by the tray. In this manner, the support, the tray and the cups are mounted for movement, and further includes an overlying cover on the support positioned over the tray and the cup impactor devices so that a complete unit is made for introducing solvent and then permitting the support to be moved.

In the Meyer '883 patent, the tray 11 is not moved, but the individual test tubes are jiggled

with a device that engages the lower ends of the test tubes and moves them relative to the tray. That is not the combination that is specified in claim 15, wherein the cover is provided on the support on which the tray itself is supported. This makes a unit that can be agitated and moved for ensuring the particles that are supported on the impaction surfaces will be properly analyzed.

Claim 16 depends from claim 15 and is allowable therewith, and further comprises the clamp that clamps the support and the cover against the tray and cup flanges to hold the tray and cup flanges relative to the receptacles in the support.

There is no clamp that holds a support, a tray, and a cover altogether shown in the Meyer '883 patent. It is true that the member 34 and the arm 33 are used for pressing down on the individual test tubes. It has to be pointed out that with the retainers 13, there can be no clamping of the test tubes or flanges on the test tubes because if the test tubes were clamped, they would be pushed right through those retainer members 13 in that there is no positive stop for the test tubes at all. The test tubes would just continue to slide if they were individually subjected to a force. The arm 33 just levels the upper edges of the test tubes to be the same level as the flange on the retainer member 13.

Claim 18 depends from claim 16 and includes the seals, and is allowable with claim 16. A plenum chamber is specified in claim 19, which in turn depends from claim 18, and is allowable therewith.

Claim 20 depends from claim 23 and includes a support frame with a surface for holding the tray and the cups, and defines the manifold in quite specific terms and includes a vial-holding bore that has an axis that is claimed relative to the plane of the tray, so that a vial can be used for introducing materials into the passageways in the manifold. Claim 20 is allowable for the reasons set forth in claim 25 and claim 27 for example as well as adding additional features. Thus, claim 20 is believed to be clearly non-obvious over Meyer '883.

Claims 21 and 22 depend from claim 20 and are believed allowable for the reasons of record.

It is clear that the Meyer '883 patent, and the second Meyer patent 4,057,148, fail to anticipate the claims presented in the application, and also for the reasons of record fail to render these claims obvious. In other words, it is respectfully submitted that claim 23 and its dependent claims are

patentable, and allowing the claims is respectfully requested.

The Examiner has respectfully requested to review the Petition to Add an Inventor and indicate that the addition of the inventor is accepted.

This Petition to add an inventor was filed using a certificate of mailing on September 21, 2005.

The Director is authorized to charge any fee deficiency required by this paper or credit any overpayment to deposit account No. 23-1123.

Respectfully submitted,

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